

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATOR DIXON**

Re: Supporting Assembly Bill A. 3557 Placing Limitations on Secret Settlements

WHEREAS, secret settlements are agreements entered into between litigants in order to settle a legal dispute without going to trial; and

WHEREAS, settlements are preferable to trials, due both to the somewhat decreased expense to taxpayers and because the agreement is freely entered into by the parties, rather than having a verdict imposed upon the parties; and

WHEREAS, however, settlements reduce the amount of valuable information available to consumers, whose taxes pay for the court system used to arrive at the settlement; and

WHEREAS, for example, a secret settlement could be used to cover up a product defect that might result in the death of a consumer, a product which a consumer could have avoided with more information; and

WHEREAS, as another example, a secret settlement could also be used to cover up inappropriate behavior at a daycare or community organization, putting children at further risk of being subjected to inappropriate behavior; and

WHEREAS, in the governmental realm, a secret settlement could be used to cover up failure of officials to avoid hazardous conditions created by governmental negligence, such as failure to repair a roadway, cover up inappropriate behavior of a governmental official, such as a workplace harassment claim, or cover up settlement of frivolous claims as a favor to generous campaign donors; and

WHEREAS, New York State Assembly Bill A. 3554 would place limitations on secret settlements in New York involving a public body or institution, a public hazard or public harm, such as is done in other states.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature supports consideration, passage and implementation of New York State Assembly Bill A. 3554, as well as any companion bill in the New York State Senate; and be it further

RESOLVED, that a certified copy of this resolution be forwarded to Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, Senate Majority Leaders Dean Skelos and Jeffrey Klein and the local delegation to the New York State Legislature.

Fiscal Impact: None.

STATE OF NEW YORK

3557

2013-2014 Regular Sessions

IN ASSEMBLY

January 28, 2013

Introduced by M. of A. KEARNS -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to prohibiting courts from sealing agreements or records involving a public body or institution or any public hazard or public harm

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The judiciary law is amended by adding a new section 4-a to
- 2 read as follows:
- 3 S 4-A. PROHIBITION AGAINST SEALING RECORDS INVOLVING A PUBLIC BODY OR
- 4 INSTITUTION. 1. UNDER NO CIRCUMSTANCES SHALL A COURT APPROVE SEALING A
- 5 SETTLEMENT AGREEMENT WHICH INVOLVES A PUBLIC BODY OR INSTITUTION. ANY
- 6 PORTION OF AN AGREEMENT OR CONTRACT ENTERED INTO BY A PUBLIC BODY WHICH
- 7 HAS THE PURPOSE OR EFFECT OF CONCEALING A PUBLIC HAZARD, ANY INFORMATION
- 8 CONCERNING A PUBLIC HAZARD, OR ANY INFORMATION WHICH MAY BE USEFUL TO
- 9 MEMBERS OF THE PUBLIC IN PROTECTING THEMSELVES FROM INJURY WHICH MAY
- 10 RESULT FROM THE PUBLIC HAZARD, IS VOID, CONTRARY TO PUBLIC POLICY, AND
- 11 MAY NOT BE ENFORCED. AS USED IN THIS SECTION, "PUBLIC HAZARD" MEANS AN
- 12 INSTRUMENTALITY, INCLUDING BUT NOT LIMITED TO ANY DEVICE, INSTRUMENT,
- 13 PERSON, PROCEDURE, PRODUCT, OR A CONDITION OF A DEVICE, INSTRUMENT,
- 14 PERSON, PROCEDURE OR PRODUCT, THAT HAS CAUSED AND IS LIKELY TO CAUSE
- 15 INJURY.
- 16 2. COURT RECORDS MAY NOT BE REMOVED FROM COURT FILES EXCEPT AS PERMIT-
- 17 TED BY STATUTE OR RULE. NO COURT ORDER OR OPINION ISSUED IN THE ADJUDI-
- 18 CATION OF A CASE MAY BE SEALED. OTHER COURT RECORDS, AS DEFINED IN
- 19 SUBDIVISION THREE OF THIS SECTION, ARE PRESUMED TO BE OPEN TO THE GENER-
- 20 AL PUBLIC AND MAY BE SEALED ONLY UPON A SHOWING OF ALL OF THE FOLLOWING:
- 21 A. A SPECIFIC, SERIOUS AND SUBSTANTIAL INTEREST WHICH CLEARLY
- 22 OUTWEIGHS:
- 23 (I) THIS PRESUMPTION OF OPENNESS;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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- 1 (II) ANY PROBABLE ADVERSE EFFECT THAT SEALING WILL HAVE UPON THE
- 2 GENERAL PUBLIC HEALTH OR SAFETY; AND
- 3 B. NO LESS RESTRICTIVE MEANS THAN SEALING RECORDS WILL ADEQUATELY AND
- 4 EFFECTIVELY PROTECT THE SPECIFIC INTEREST ASSERTED.
- 5 3. FOR PURPOSES OF THIS SECTION, THE TERM "COURT RECORDS" MEANS:
- 6 A. ALL DOCUMENTS OF ANY NATURE FILED IN CONNECTION WITH ANY MATTER
- 7 BEFORE ANY CIVIL COURT, EXCEPT:
- 8 (I) DOCUMENTS FILED WITH A COURT IN CAMERA, SOLELY FOR THE PURPOSE OF
- 9 OBTAINING A RULING ON THE DISCOVERABILITY OF SUCH DOCUMENTS;

10 (II) DOCUMENTS IN COURT FILES TO WHICH ACCESS IS OTHERWISE RESTRICTED
11 BY LAW;
12 (III) DOCUMENTS FILED IN AN ACTION ORIGINALLY ARISING UNDER THE FAMILY
13 COURT ACT.
14 B. SETTLEMENT AGREEMENTS NOT FILED OF RECORD, EXCLUDING ALL REFERENCE
15 TO ANY MONETARY CONSIDERATION, THAT COULD RESTRICT DISCLOSURE OF INFOR-
16 MATION CONCERNING MATTERS THAT HAVE A PROBABLE ADVERSE EFFECT UPON THE
17 GENERAL PUBLIC HEALTH OR SAFETY, OR THE ADMINISTRATION OF PUBLIC OFFICE,
18 OR THE OPERATION OF GOVERNMENT.
19 S 2. This act shall take effect immediately.